



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable W. K. McClain
Criminal District Attorney
Georgetown, Texas

Dear Sir:

Opinion No. 0-4121

Re: Whether common school district trustee who has been convicted of murder and given five year suspended sentence may continue as trustee, and related questions.

We have received your letter of recent date which we quote in part as follows:

"Please give me your opinion on the following question: 'Can a person, who has been duly elected as a trustee of a common school district, serve as such trustee after he has been convicted in the District Court on a charge of murder, and given a five year suspended sentence'?"

"The second question I would like to have you answer is this:

"Does a suspended sentence disqualify a trustee from voting in any election, whether precinct, county, State or National election?'"

As the offense involved is a capital offense, we assume that the defendant was convicted by a jury.

Section 2 of Article XVI of the Constitution of Texas provides as follows:

"Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who may have been or shall hereafter be convicted of robbery, perjury, forgery, or other high crimes. . . ."

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Article 2937, Revised Civil Statutes, reads in part as follows:

"No person shall be eligible to any state, county, precinct, or municipal office in this State, unless he shall be eligible to hold office under the Constitution of this State. . ."

Article 5968, Revised Civil Statutes, provides as follows:

"All convictions by a petit jury of any county officers for any felony, . . . shall work an immediate removal from office of the officer so convicted. Each such judgment of conviction shall embody within it an order removing such officer." (Emphasis ours)

It is settled that a school trustee is a county officer. *Hendricks v. State ex rel. Eckford*, 49 S. W. 705; *Bonner v. Belsterling*, 104 Tex. 432; *Fowler et al v. Thomas et al*, 275 S. W. 253; Opinion No. 0-1521.

Article 2954, Revised Civil Statutes, reads in part as follows:

"The following classes of persons shall not be allowed to vote in this State:

". . .

"4. All persons convicted of any felony, except those restored to full citizenship, and right of suffrage, or pardoned.

". . ."

On November 22, 1940, this department rendered Opinion No. 0-2695 which held that in view of Section 2 of Article XVI, Constitution of Texas, a person who received a suspended sentence for burglary was disqualified thereby from holding the office of justice of the peace. We quote from the opinion as follows:

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"What does the court mean by this language? Clearly that if the Suspended Sentence Law defeats or nullifies or conflicts with Section 2 of Article XVI of the Constitution, it would be void. This conflict, according to the court, would result if a person who is the recipient of a suspended sentence would not suffer the disability pronounced by this provision of the Constitution. In other words, as applied to Section 2 of Article 16 of the Constitution, if because of and under the suspended sentence law a person could hold office, serve on juries, and vote, notwithstanding his having been adjudged guilty of the crimes mentioned, because his sentence had been suspended, would not the effect of the suspended sentence law be to defeat the purpose of the Constitution? Whereas, if the word 'convicted' in Section 2 of Article 16 of the Constitution be held to mean the ascertainment and publication of guilt, rather than a final conviction, the disabilities pronounced by the Constitution would be suffered and the spirit and purpose of Section 2 of Article 16 is not violated by the suspended sentence law."

The issues involved in your queries were fully discussed, and authorities thereon were exhausted, in opinion No. 0-2698, and we enclose a copy of said opinion for your consideration.

In view of the above cited constitutional and statutory provisions and the principles announced in Opinion No. 0-2698, we are constrained to hold that a person who is convicted of murder and given a five year suspended sentence which is still in force and effect is not qualified either to hold the office of trustee of a common school district or to exercise the right of suffrage.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *George W. Sparks*
George W. Sparks
Assistant

APPROVED NOV 19, 1941

Good Allen
FIRST ASSISTANT
ATTORNEY GENERAL

GWS:LM

ENCLOSURE

